

**Remarks/Arguments:**

**Introduction**

Claims 1-11, 20-24, 30 and 31 are pending. Claims 10, 11 and 20-24 are withdrawn from consideration.

**Objection to the Specification**

The examiner has objected to the abstract. Applicant respectfully submits that with the amendments presented herein to the abstract obviate the concerns raised by the examiner.

Reconsider and withdrawal of the objection to the abstract is respectfully requested.

**Section 103 Rejections**

Claims 1-9 and 30 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 6,142,341 to Uematsu (hereinafter “Uematsu”) in view of U.S. patent Application Publication No. 2002/0094415 to Jud (hereinafter “Jud”). Applicant respectfully traverses.

In the present application, the rough surface is applied to improve the adhesion between a spout and film walls of a bag without using sealing ribs, see for reference paragraphs [0004] and [0013] of the published US patent application, i.e., US 2009/0139993. This problem that the subject invention addresses is particularly related to the field of flexible bags and has nothing to do with closures or lids for cans or the like.

Applicant agrees with the acknowledgement by the examiner that Uematsu fails to disclose that its sealing surfaces may be provided with a rough surface structure.

Jud specifically teaches a rough surface is to be applied to only one surface or substrate of a lid to prevent lids from sticking together when the lids are separated or unstacked by a

packaging machine. (Jud, paragraph [0003]). Jud further teaches that embossing or applying a rough surface to the opposed lid surface is to be strictly avoided as such embossing thwarts the very purpose, intent and function of Jud, i.e., providing this opposed surface within printed images. Thus, modifying Jud, as proposed by the Examiner, to provide a body of a spout having opposed sealing sides, each of which having a rough surface structure, defeats the very purpose, function and intent of Jud. Accordingly, Jud teaches away from the present invention.

Moreover, Jud fails to disclose, teach or suggest the sealing of container walls to a sprout. Jud merely teaches a lid for a container and fails to disclose, teach or suggest any method for sealing film walls of a bag as set forth by the present invention. The only reference of record that teaches applying rough surface structure so that film walls of a bag may be sealed is the subject application.

In establishing a *prima facie* case of obviousness, the cited reference must be considered for the entirety of their teachings. *Bausch & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). It is impermissible during examination to pick and choose from a reference only so much that supports the alleged rejection. *Id.* It is only through hindsight reconstruction and selective picking and choosing while ignoring divergent teachings may the examiner attempt to reach the present invention through the modifying Uematsu by Jud. It is also well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicant's disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993). Such attempted picking and choosing is clearly evident as the examiner ignores the express teaching of Jud which teach away from the present invention.

Thus, claims 1-9 and 30 are patentably distinct over Uematsu and Jud. Reconsideration and withdrawal of the rejections of claims 1-9 and 30 are respectfully requested.

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Claim 31 is rejected under 35 U.S.C. §103(a) as allegedly being obvious over Uematsu and Jud in further view of U.S. Patent No. 6,241,122 to Araki et al. (hereinafter "Araki"). Applicant respectfully traverses.

Araki is cited by the examiner for certain disclosure relating to screw thread and a screw cap. Araki, however, fails to cure the deficiencies of Uematsu and Jud.

Furthermore, Applicants preserve the right to traverse Araki on the merits as those arguments are not presented herein merely for the sake of brevity. Applicants are not making any admissions regarding the assertions made by the Examiner with respect to Araki.

### **Summary**

Therefore, Applicants respectfully submit that independent claim 1, and all claims dependent therefrom, including all withdrawn dependent are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited, including rejoinder and allowance of all withdrawn dependent claims.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if

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any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

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